

DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF LABOR STANDARDS ENFORCEMENTLEGAL SECTION  
455 Golden Gate Avenue, Room 3166  
San Francisco, CA 94102  
(415) 703-4150H. THOMAS CADELL, JR., *Chief Counsel*

February 2, 1993

Jack Kilpatrick  
Redding Aero Enterprises  
3770 Flight Avenue  
Redding, CA 96002Re: **Overtime Requirements**

Dear Mr. Kilpatrick:

I have been asked to respond to your letter of January 15, 1993, asking, essentially, whether an air charter company based in California and operating under the Federal Aviation Administration Air Carrier Certificate is subject to the overtime requirements of the California Industrial Welfare Commission Order 9-89. The answer is: yes.

You state that "in years past overtime did not apply" and ask that we clarify this for you. I find it difficult to address this question because I don't understand the basis for the exception from the California law. You refer to the Fair Labor Standards Act 1938, §13 B<sup>1</sup>. The provisions of the FLSA do not impact on the California overtime requirements. (See 29 U.S.C. §213)

It is possible that your misunderstanding of the law might be premised upon a 1963 California Appellate Court case entitled *United Air Lines, Inc. v. Industrial Welfare Commission* (1963) 211 Cal.App.2d 729, which held that air carriers could not be forced to comply with the "uniform" requirements of the IWC Orders in force at that time. However, not only was the case limited to the question of "uniforms", but the Supreme Court of California, in the case of *Industrial Welfare Commission v. Superior Court* (1980) 27 Cal.3d 690, 728, held that "[T]o the extent that the case of *United Airlines v. Industrial Welfare Com.* (1963) 211 Cal.App.2d 729, 744, supports the contention that state regulation of working conditions is invalid outside the realm of health and safety provisions, that decision is disapproved.

As the California Supreme Court pointed out in the *Industrial*

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<sup>1</sup> Actually, I believe you are referring to 29 U.S.C. 13(b)(3) which describes the exception for employees engaged in air transport available under the federal law. This has nothing to do with state law, however.

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*Welfare Commission v. Superior Court* case, "Numerous legislative enactments and judicial authorities make it clear that the states possess broad authority, under their police power, to prescribe minimum standards of employer conduct found necessary to protect the welfare of employees, even when health or safety considerations are not directly implicated." The federal Ninth Circuit Court of Appeal in the recent case of *Pacific Merchant Shipping Ass'n v. Aubry* 918 F.2d 1409 (9th Cir.1990) agreed with the California Supreme Court's conclusion that enforcement of minimum state standards is not proscribed by the U.S. Constitution's supremacy clause.

As I said above, I have no idea what your misunderstanding of the obligations of California employers is based upon. I can only assure you that it has always been the law in California that the minimum wage and overtime requirements of the California law are not affected by federal preemption.

Thank you for your interest in California labor law. If you have any further questions I suggest you address them to your local District Office of the Labor Commissioner.

Yours truly,

H. THOMAS CADELL, JR.  
Chief Counsel

c.c. Victoria Bradshaw, State Labor Commissioner  
Lola Felix, Regional Mgr.  
Gary Hermann, Sr. Deputy, Redding